



Position Statement

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PUBLIC LAND ACCESS

EXECUTIVE SUMMARY

An estimated nine million acres of land administered by the Bureau of Land Management in the western states (excluding Alaska) can only be accessed with the permission of adjacent private landowners. There is increasing demand by the public to obtain or improve access to these public lands for public recreation. This paper deals only with issues of legal access, not physical access. The resolution of public access issues within BLM is hampered largely by limited funding and staffing within the lands and realty program.



Passage of the Dingell Act in 2019 (Public Law 116-9) offers one tool to address this issue by giving the public the opportunity to nominate parcels that would improve access to public lands. The BLM uses this information to help develop a priority access list. With adequate resources, existing access information could be digitized for use with GPS systems to assist the recreating public in knowing how to get to and stay on public land to avoid trespassing on private land.

BACKGROUND

The fragmented public land ownership pattern administered by BLM in the western states today is the result of historic Acts of Congress such as the Homestead acts, mining laws, and the railroad and state land grants. This land ownership fragmentation has resulted in the elimination of public access to many other tracts of public lands administered by BLM. In 2018, the Theodore Roosevelt Conservation Partnership (TRCP) estimated that over nine million acres of public land in the western states (excluding Alaska) could only be accessed with the permission of adjacent private landowners. The TRCP report identified over nine million acres of public land in the western states as landlocked.

Access issues vary from state to state, depending upon the land ownership fragmentation pattern and the quality/quantity of resources unavailable to the public. A recent report by the Center for Western Priorities estimated that over 1.5 million acres of public land in six western states are inaccessible in checkerboard land areas alone. These areas were created by the public land

LANDLOCKED LANDS	
(acres in thousands)	
Arizona.....	243
California	492
Colorado.....	269
Idaho.....	208
Montana	1,523
Nevada	2,054
New Mexico.....	554
North Dakota.....	107
Oregon.....	443
South Dakota.....	196
Utah	264
Washington.....	121
Wyoming.....	3,046

The Public Lands Foundation advocates and works for the retention of America's Public Lands in public hands professionally and sustainably managed for responsible common use and enjoyment.

laws passed in the 1800s to facilitate settling and development in the West. For instance, when railroads would develop lines across the West they would usually receive, in 20 or 50-mile strips, alternate sections of public land for each mile of track that was built. Checkerboard lands have alternating land ownership along section lines where every section corner has conflicting public and private ownership. Unless allowed by state or federal law, access in these areas is impeded since crossing from one corner of public land to another corner of public land (“corner crossing”) is generally considered to be illegal.

The BLM and public land users have continually identified a need for additional access to the public lands for recreational opportunities because of the growing demand for recreation by the urban populations of the West. In 2020, the BLM “Public Land Statistics” estimates there were over 68 million visitor days of recreational uses on the public lands that year and many of these people look to BLM-managed public lands for open space. In 2020, BLM projected that almost 57,000 jobs are supported by recreation activities on the over 240 million acres of BLM-managed lands.



Historically, BLM had an easement acquisition program, the Acquisition and Transportation Right-of-Way (ATROW) program that until 1985 received an annual appropriation of about \$1.2 million. After that time, the Land and Water Conservation Fund (LWCF) program provided funding, but the emphasis on land acquisition limited funding for easement acquisitions. As a result of the lack of funding, BLM lost much of the staff with the experience and skills needed to process easements. Recent passage of the Great American Outdoors Act to permanently fund LWCF could provide a funding source for easement acquisitions. However, unless the lands and realty program is able to hire additional staff, either through LWCF funding or Congressional appropriation, the agency will have limited capacity to research and compile data on access needs and process easement acquisitions.

Throughout the western United States, private property owners acquire lands to control access to adjacent Federal lands for many reasons. State and county agencies may be reluctant to defend the status of historical roads and travel-ways because of concerns about road maintenance cost, potential legal fees, and a reluctance to confront the private landowner. This is reflected in the growing number of abandoned and closed county roads and rights-of-way that previously provided access to public or even state lands. Additionally, public county road systems in many counties are often ill defined. There are private organizations in some states, such as Montana’s non-profit Public Land and Water Access Association, that research county road records when historic roads are closed by the private landowner. However, this is an expensive and time-consuming proposition for small non-profit entities.

Passage of the Dingell Act provides a process for the public to nominate parcels for improving access, and BLM is directed to use this information to “populate a standardized geodatabase with key information about those parcels”. The Act further directs BLM to use that information to help develop a priority access list with accompanying maps. With sufficient funding, BLM could generate an additional database that would be particularly useful for the public, which would consolidate, digitize, and make publicly available recreational access information as GIS files suitable for use with GPS systems. The Modernizing Access to Our Public Lands Act (MAPLand Act) was passed by the House on March 15, 2022 and is pending Senate action.

This Act would direct the Federal land management agencies to develop this type of database. If the act becomes law, it and the Dingle Act could provide the framework for addressing access to public land. However, it may be necessary for the agency to develop a comprehensive proposal, including a proposed budget, to identify the workload, cost, and other issues that would need to be considered to implement an overall public land access program.

PUBLIC LANDS FOUNDATION POSITION

1. The BLM needs to respond to the increasing demand for recreational access to the public lands. It cannot do this until the lack of funding and staffing in the BLM lands and realty program is adequately addressed.
2. The LWCF should continue to be used as a funding source for easement acquisitions.
3. County Road record research should be undertaken in priority counties where access to public lands has been identified as an issue.
4. All parties should work to increase the use of innovative partnership arrangements with State and local governments and private groups with an interest in acquiring access to public lands to help resolve access conflicts and uncertainties. Greater use should be made of legal options to protect and enhance access to public lands.
5. There should be increased support for and advocacy for land acquisitions and exchanges to help alleviate problems generated by the historical fragmentation of land ownership.
6. Incentive programs need to be developed and fostered to reward and compensate private landowners for public usage and access to public lands. Some states already use incentives to give access to BLM administered public lands for some uses.
7. The BLM should encourage the resolution of legal questions over the ability to access public lands in checkerboard land areas (“corner crossing”) pursuant to the Unlawful Inclosures of Public Lands Act of 1885 (UIA). The UIA prohibits private restrictions that limit public access to public lands. “Corner crossing” public land access in checkerboard land areas should be confirmed as a public right.
8. A database that digitizes recreational access information for use with GPS is desirable. The MAPLand Act along with Congressional appropriations would meet this need, but it needs to take into consideration BLM’s ability to collect the necessary data and develop its transportation plans.

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